



CRWI Update April 31, 2023

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, LLC

GENERATOR MEMBERS

Eli Lilly and Company
Formosa Plastics Corporation, USA
3M

ASSOCIATE MEMBERS

AECOM
Alliance Source Testing LLC
B3 Systems
Civil & Environmental Consultants, Inc.
Coterie Environmental, LLC
Eurofins TestAmerica
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
TEConsulting, LLC
TRC Environmental Corporation
Trinity Consultants
Wood, PLC

INDIVIDUAL MEMBERS

Ronald E. Bastian, PE
Ronald O. Kagel, PhD

ACADEMIC MEMBERS

(Includes faculty from:)

Clarkson University
Colorado School of Mines
Lamar University
Louisiana State University
Mississippi State University
New Jersey Institute of Technology
University of California – Berkeley
University of Dayton
University of Kentucky
University of Maryland
University of Utah

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HWC MACT RTR

On March 14, 2023, a federal district court set the following briefing schedule for the hazardous waste combustor (HWC) maximum achievable control technology (MACT) risk and technology review (RTR) rule deadline suit:

- Plaintiff's motion for summary judgement is due on June 1, 2023;
- EPA cross-motion for summary judgement and opposition to plaintiff's motion are due on July 14, 2023;
- Plaintiff's combined opposition to EPA's motion and reply in support are due on July 28, 2023; and
- EPA's reply in support is due August 18, 2023.

If needed, a hearing date will be set sometime in the future. Meanwhile, the plaintiffs and EPA continue to negotiate a potential settlement agreement.

Method 23 final rule

On March 20, 2023, EPA published Method 23. The Agency has completely re-written the method. The preamble of the final rule contains a cross walk between the old and new versions of the method. In addition, the final rule modified 40 CFR 63.1208(b)(1) and 40 CFR 266.104(e)(1) to allow hazardous waste combustors the option of using either Method 23 or Method 0023A during testing. The revised method became effective on the date of publication.

E-manifest compliance advisory

On March 14, 2023, EPA released a compliance advisory to assist hazardous waste handlers in reducing data quality issues associated with e-manifests. EPA identified three issues that seem to be prevalent in current manifests. They are:

- Inaccurate or missing EPA ID numbers;
- Tracking number mismatch and using paper manifests that are not printed by a registered printing company; and

- Translational errors based on typographical errors or illegible entries on the paper manifest.

A copy of the advisory can be found at <https://www.epa.gov/e-manifest>.

Environmental justice

In 2021, the Chicago Department of Public Health conducted a health impact assessment as a part of reviewing the permit application for a recycling facility. A cumulative impacts analysis was a part of this assessment. The health impact assessment concluded that the facility presented an unreasonable risk and the City denied the permit. With the help of Region 5, the Chicago is now considering expanding the cumulative impacts analysis across the city. Just how this will be manifested is unclear.

Last year, New Jersey proposed a rule that would include race as a metric on whether communities would qualify as “disadvantaged.” That rule was expected to be finalized by the end of 2022 but that date has slipped into April of this year. In late March, the New York Climate Justice Working Group voted to include race as a criterion in their state’s regulations. The group’s final criteria includes 45 indicators and 35 percent of the state’s census blocks. How this designation will impact future industrial activity is yet to be determined. More information can be found at <https://climate.ny.gov/resources/climate-justice-working-group/>.

Colorado and Region 8 released a final enforcement and compliance workplan describing how they intend to prioritize efforts in heavily polluted communities. The work plan describes how they intend to target inspections, coordinate enforcement actions, and enhance community engagement. Some of the individual targets include prioritizing inspections in disproportionately impacted communities, encourage the use of supplemental projects as a part of settlement agreements, hold public meetings, expand the use of social media as a method of sharing information, develop best practices for community engagement, and create a new environmental justice in enforcement webpage. The agreement can be found at <https://www.epa.gov/newsreleases/epa-and-colorado-release-final-enforcement-and-compliance-workplan-prioritize-0>.

PFAS

The biggest news on the per- and polyfluoroalkyl substances (PFAS) issue was the release of the proposed rule to set maximum contaminant levels (MCL) for six compounds under the Safe Drinking Water Act. The proposed rule actually sets the MCL for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) at zero but the enforceable limit is proposed at 4 ppt, the level they can reliably be measured. EPA used a novel approach for the other four PFAS compounds (perfluorononanoate – PFNA, perfluorohexane sulfonic acid – PFHxS, perfluorobutane

sulfonic acid – PFBS, and hexa-fluoropropylene oxide dimer acid – Gen-X). Here EPA is proposing a limit of a hazard index of 1.0 for the combination of the four chemicals. While these standards are for drinking water, they may well become the *de facto* clean up standards once any or all of these chemicals become hazardous substances under CERCLA. Also in this proposed rule, EPA has labeled PFOS as a “likely carcinogen” based on potential liver and kidney cancer effects. PFOA had already been considered by the Agency as a “likely carcinogen.” This designation prompted setting the limit at the level of detection.

One issue raised during the comment period for the proposed rule to add PFOA and PFOS to the list of hazardous substances under CERCLA was how this might impact passthrough entities such as wastewater treatment plants. EPA went to extensive lengths to say that these entities would be lowest on their priorities for enforcement. However, that does not preclude civil suits. Since the comment period closed, these entities have been pushing for more than just enforcement discretion. Unfortunately for them, the statute does not allow any exemptions. This will have to be addressed by Congress. House and Senate staffs have been made aware of this issue and it may get some traction in this Congress.

EPA’s advanced notice of proposed rulemaking that will request information on whether additional PFAS compounds should be regulated under CERCLA cleared Office of Management and Budget on March 24, 2023. As of the end of March, the Agency has not released a copy. It will likely be signed and published in the *Federal Register* in April.

Environmental groups filed suit in federal district court in California alleging the Defense Logistics Agency violated the provisions of the FY 2020 National Defense Authorization Act when they sent aqueous film-forming foam to be destroyed at hazardous waste incinerators. The case languished in that court before being transferred to a federal district court in Ohio. In a March 1, 2023, letter to the court, the parties indicated they are actively engaged in settlement negotiations. The letter noted that if successful, the discussions would resolve this case in its entirety.

Finally – the toilet paper wars. The University of Florida published a study suggesting that the toilet paper should be considered as a major source of PFAS entering into the wastewater treatment system. The American Forest and Paper Association responded that PFAS compounds are not used in the manufacture of toilet paper or any other tissue products in the U.S.

EPA budget request

In March of every year, the President submits his requests for funding for the next fiscal year. President Biden’s funding request for EPA for FY 2024 (beginning on October 1, 2023) was \$12 billion. This is a 19 percent increase from their current funding levels. This includes an additional 2,400 full-time equivalents (FTE) to help rebuild the Agency. In 2023, EPA had a little over 15,000 FTEs. The largest number of FTEs were in 1999

with a little over 18,000. In EPA's justification for the increased funds, they cited tackling the climate crisis, advancing environmental justice, upgrading drinking water and wastewater infrastructure, protecting communities for hazardous waste (mostly Superfund), tackling the per- and polyfluoroalkyl substances issue, and enforcement. With a Republican controlled House of Representatives, it is likely that this request will be paired down before passage.

EPA personnel

Cynthia Giles was the Assistant Administrator for the Office of Enforcement and Compliance Assurance under the Obama Administration. While she was in that position, Ms. Giles developed the idea of incorporating methods into rules to make enforcement easier. Basically, she wanted all rules to have continuous monitoring and reporting coupled with automatic penalties. She is now a senior advisor in the Office of Air and Radiation. In her announcement of taking this role, she suggested adding these ideas into new air rules. Based on this, one should expect more continuous emission monitors and automatic reporting to be incorporated into future air rules.

East Palestine derailment cleanup

Seems like everyone has an opinion on how Norfolk Southern and EPA should conduct the cleanup activities following the February 3, 2023, derailment in East Palestine, OH. Test results from early sampling for 19 chlorobenzene and chlorophenol compounds suggested a low probability for the release of dioxins. These compounds are considered as indicator compounds for dioxin. However, after a request from the two Ohio Senators, EPA agreed to conduct dioxin testing at the site. EPA stated they would continue to monitor for the indicator compounds but require Norfolk Southern to start sampling for dioxins.

The Senate Environment and Public Works Committee held a March 8, 2023, hearing that included the CEO of Norfolk Southern, EPA's Region 5 administrator, Ohio EPA's director, and others. In general, the Committee praised EPA response but wanted more transparency and suggested additional hearings would be held in the near future. In addition, the House Energy and Commerce Committee held a hearing on March 28, 2023, with basically the same set of panelists.

The House Science, Space and Technology Committee sent a letter to the EPA Administrator with a list of 11 questions pertaining to the cleanup. These included questions on sampling (how sites were selected, who was involved in the sampling, what methods were being used, etc.), how EPA's Airborne Spectral Photometric Environmental Collection Technology was used, is this incident similar or different from previous derailments, is the cleanup procedure the same as has been used in the past, and how does EPA expect this incident to impact the area in the long term. The Committee asked for a response by April 6, 2023.

The Heritage Foundation has filed Freedom of Information Act requests to compel the Agency to release detailed information on their responses to the incident. Beyond Plastics has criticized the response teams from EPA and Ohio EPA for the “controlled burn” of the vinyl chloride to prevent a potential explosion stating the burn created additional safety risks.

Several states have rejected shipments of waste materials from the site prompting the EPA Administrator to remind them that they cannot block shipments of out-of-state wastes. This has not stopped local entities from trying to find ways to not accept that waste. The whole process is made more complicated by the fact that there is little excess capacity in the system to accept large amounts of waste from an episodic event.

In late February, EPA issued a unilateral administrative order to require Norfolk Southern to conduct necessary actions for cleanup activities and costs under the CERCLA. The order requires the company to identify and clean up contaminated soil and water, reimburse EPA for remediation offered to local residents, and pay for EPA work already completed. The Department of Justice followed this up with a March 30, 2023, complaint filed in the U.S. District Court for the Northern District of Ohio alleging that Norfolk Southern violated the Clean Water Act by unlawfully discharging pollutants into regulated waters without a permit and discharging oil and hazardous substances in quantities that are considered harmful.

Enforcement

Denka Performance Elastomer LLC manufactures neoprene at their St. John the Baptist Parish, LA facility. The raw material used to produce neoprene is chloroprene. Denka is located in an environmental justice community. In February, the Department of Justice filed a complaint in U.S. District Court to force Denka to reduce chloroprene emissions (see the February 2023 Update for additional details). In March, the Department of Justice upped the ante by submitting a motion asking the court to force the company to immediately cease neoprene production at the facility. It should be noted that the facility is in compliance with its Title V permit and the consent decree with Louisiana. Their current permit has no limits for chloroprene emissions.

EPA issued a Consent Agreement and Final Orders to Chisholm Energy Operating LLC and Matador Production Company for VOC emissions from their New Mexico operations. The original violations for both were based on data from flyovers by a helicopter equipped with an infrared camera designed to identify hydrocarbon leaks.

CRWI meetings

Our next meeting will be on May 17,18, 2023, in East Liverpool, OH. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.